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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 136 of 2018

1. Govind Yadav S/o Mangal Yadav, aged about 45 years
2. Saraswati Yadav W/o Govind Yadav, aged about 42 years

Both are R/o Village Kundrapara, Lormi, Police Station Lormi, District Mungeli (C.G.)

---- Appellants/Claimants

Versus

1. Krishna Kumar Gupta S/o Santosh Gupta, aged about 28 years
(Driver of the offending vehicle Bolero XL No. C.G.-10-F7516)
2. Santosh Kumar Gupta S/o Motilal Gupta, aged about 55 years
(Owner of the offending vehicle Bolero XL No. C.G.-10-F7516)
3. The New India Insurance Company Limited, Razeev Plaza, 2nd Floor Bilaspur (C.G.)
(Insurer of the offending vehicle Bolero XL No. C.G.-10-F7516)

---- Respondents/Non-applicants

For Appellants	:	Shri R.N. Jha, Advocate
For Respondents 1 & 2	:	None
For Respondent No.3	:	Shri Anil Gulati, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

10.05.2019

1. This appeal is by the Claimants, unfortunate parents of deceased- Bhupendra Kumar Yadav aged about 21 years, against the award dated 31.10.2017 passed by the Motor Accident Claims Tribunal, Mungeli, District Mungeli (C.G.) in Claim Case No. 02 of 2016 awarding total compensation of Rs.4,85,400/- with interest @ 9% per annum from the date of application till realization, fastening liability on non-applicants jointly and severally.

2. Facts of the case, in brief, are that on 14.08.2015 deceased- Bhupendra Kumar Yadav, was returning from his office to his home after the office hours from Tehsil Lormi, when he reached near motorcycle garage of Prabhu, non-applicant No.1 – Krishna Kumar Gupta, driver of the offending vehicle Bolero XL No. CG-10/F/7516, owned by non-applicant No.2 and insured with non-applicant No.3, driving the said offending vehicle in a rash and negligent manner, dashed Bhupendra Kumar Yadav. As a result thereof, Bhupendra Kumar Yadav sustained

grievous injury on his head and he was taken to hospital, where he died during treatment.

3. Learned counsel for the Appellants/Claimants submits that as per statements given and document produced by the Claimants, the deceased was earning Rs.45,000/- per month by working in traveling agencies, but the Tribunal has considered the income of the deceased as Rs.3,800/- per month. He further submits that no amount towards future prospect has been granted to the Claimants. He also submits that the amount awarded under the conventional heads is on the lower side. Therefore, amount of compensation awarded by the Tribunal is on the lower side deserves to be enhanced suitably.

4. On the other hand, learned counsel for Respondent No.3/Insurance Company opposes the contention made by learned counsel for the Appellants and submits that amount of Rs.50,000/- awarded towards filial consortium by the Tribunal is on the higher side. He also submits that the deceased was self employed person and proof of the income of the deceased has not been established by the Claimants before the Tribunal.

5. Heard learned counsel for the parties and perused the material available on record.

6. It is not disputed that no counter appeal has been filed the Respondents/non-applicant and the deceased died due rash and negligent driving of the offending vehicle- Bolero XL No. CG-10/F/7516 by its driver/non-applicant No.1, owned by non-applicant No.2 and insured with non-applicant No.3 and there is no breach of policy conditions.

7. As regards income of the deceased, though the Claimants have pleaded that the deceased was earning Rs.45,000/- per month by doing the work in travel agencies but no documentary evidence in support thereof has been adduced. Therefore, in these circumstances, in absence of any proof regarding income, the income of the deceased is considered as Rs.5,500/- per month as per minimum wages at the relevant time. Further, considering the age of the deceased i.e. 21

years and he was unmarried which is not disputed by the parties, the dependency, the nature of his job and in view of decisions in matters of **National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680** and **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121**, thus, the Claimants/Appellants are held entitled for compensation in the following manner:

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the deceased	Rs.5,500/- per month Rs.66,000/- per annum
2.	40% towards future prospects added to annual income	(Rs.66,000/- + Rs.26,400/-) Rs.92,400/-
3.	50% deduction towards personal and living expenses of Deceased	(Rs.92,400/- – Rs.46,200/-) Rs.46,200/-
4.	Multiplier of 18 to be applied	Rs.46,200/- x 18 = Rs.8,31,600/-
5.	Conventional heads: Funeral expenses and loss of estate	Rs.30,000/-
6.	Loss filial consortium	Rs.50,000/- (as awarded by the Tribunal)
	Total Compensation	Rs.9,11,600/-

8. Since the Tribunal has already awarded Rs.4,85,400/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.4,26,200/- with interest @ 9% per annum from the date of application till its realization. However, rest of the conditions of the impugned award shall remain intact.

9. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

10. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge